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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

W. P. No. 64 of 2002

Petitioner : Dev Narayan

Versus

Respondents : South Eastern Coalfields Limited & others

Post for order on 1st May, 2007.

Satish
JUDGE
30.04.2007

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

Writ Petition No. 64 of 2002

Petitioner		Dev Narayan, S/o Late Shri Mangal Sai, aged about 21 years, Resident of Village Katgoudi, P.S./Tahsil Sonhat, District – Koreya.
	Versus	
Respondents	1.	South Eastern Coalfields Limited, through its Chairman-cum-Managing Director, Head Office at S.E.C.L. Headquarter, Seepat Road, Sarkanda, Bilaspur.
	2.	Chief General Manager, South Eastern Coalfields Limited Baikunthpur Area, Baikunthpur, District Koreya.
	3.	Sub Area Manager, South Eastern Coalfields Limited, Churcha Colliery (West), P.S./Tahsil Baikunthpur, District Koreya.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

Shri B. D. Guru, Advocate for the petitioner.

Shri P. S. Nair, Senior Advocate with Shri R. K. Gupta, Advocate for the respondents.

ORDER

(Passed on this 1st day of May, 2007)

1. The petitioner, who was about 12 years of age, at the time of death of his father in an accident i.e. 7.7.1994, has filed this petition under Article 226/227 of the Constitution of India seeking a direction to the respondents/South Eastern Coalfields Ltd. to appoint him on compassionate basis.

2. The brief facts, in nutshell, are that the father of the petitioner namely Shri Mangal Sai, was working as P.R.L. in the South Eastern Coalfields Ltd. Churcha Colliery (West), when he died in an accident on 7.7.1994. In the said accident several other labourers had also died. According to the petitioner, at the time of death of his father, he, being elder of three

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brothers, was only about 12 years old and his mother, being ailing, was not in a position to get the compassionate appointment. After the death of the father of the petitioner, assurance was given by the officers of the management of the respondents that when the petitioner would attain the majority, he may be considered for compassionate appointment in place of his father. On attaining the age of majority, he filed an application for compassionate appointment on 22.9.2001(Annexure P/6). The mother of the petitioner also submitted an application (Annexure P/4), supported by an affidavit (Annexure P/5) that her elder son i.e. the petitioner be granted compassionate appointment. The respondents failed to respond and as such, the petitioner was made to file the instant petition on 3.1.2002 for appropriate relief.

3. The respondents have filed their return. It has been categorically stated that since the father of the petitioner died in an accident, in accordance with the provisions of the National Coal Wage Agreement (N.C.W.A.) the widow of the deceased employee was entitled either to get compassionate appointment or to take monetary compensation. After the death of the father of the petitioner, his mother submitted an application (Annexure R/1) that though according to the provisions of N.C.W.A. 4 she was entitled to get compassionate appointment on account of death of her husband in the accident, but as she was unable to perform the duties, she requested for grant of pension. Pursuant to the said application of the mother of the petitioner, monetary compensation amount for a sum of Rs.3000/- per month, w.e.f. October, 1994 was sanctioned vide order dated 23.2.1996 (Annexure R/4), which was increased to Rs.4000/- p.m. The mother of the petitioner was getting the monetary compensation till she attained 60 years of age. According to the provisions of N.C.W.A. V, if the age of the petitioner was 15 years, at the time of death of his father,

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then his name could be kept in a live roster register till he could attain the age of 18 years. Since the petitioner was below 15 years, at the time of death of his father, his name could not be kept in the live roster register. Thus, the petitioner is not entitled for compassionate appointment. Only those dependents of deceased employees were given employment, who fulfilled the requisite qualification and requirement.

4. Learned counsel appearing for the petitioner submitted that the petitioner is entitled to appointment on compassionate basis. Per contra, learned counsel appearing for the respondents submitted that since the mother of the petitioner had declined to take compassionate appointment and prayed for grant of pension, monthly monetary compensation to the tune of Rs. 4000/- is being paid to her. Now, after a lapse of about 13 years, the petitioner is not entitled to be appointed on compassionate basis.

5. I have heard learned counsel for the parties and perused the pleadings and records appended thereto.

6. As per the provision of N.C.W.A. in case of death due to mine accident the female dependent would have the option to either accept monetary compensation of Rs. 3000/- p.m. (Annexure R/3) or employment irrespective of her age. This clause was subsequently amended and the amount of monetary compensation was increased to Rs. 4000/- p.m. (Annexure P/7). In the present case mother of the petitioner had chosen monetary compensation instead of employment, as such she was initially granted Rs. 3000/- p.m. as monetary compensation and thereafter it was increased to Rs. 4000/- p.m. The N.C.W.A does not provide for monetary compensation as well as employment to other family members after attaining the age of majority.

7. The petitioner has filed this petition with unexplained inordinate delay, seeking a direction to the respondents to grant compassionate

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appointment. The father of the petitioner died on 7.7.1994 and the petitioner made an application for compassionate appointment on 22.9.2001.

8. It is well settled that the appointment on compassionate ground is not a method of recruitment, but, is a facility to provide for immediate rehabilitation of the family in distress for relieving the dependent family members of the deceased employee from destitution. In other words, the object of compassionate appointment is to enable penurious family to tide over the sudden financial crisis and is not to provide employment. It is also well settled that mere death of the employee does not entitle his family to claim compassionate appointment if the family members could sustain themselves financially from other sources of income.

9. In **Haryana State Electricity Board and another Vs. Hakim Singh** { (1997) 8 SCC 85 } the Hon'ble Supreme Court held that "the whole object of any compassionate appointment scheme is to give succor to the family to tide over the sudden financial crisis befallen the dependents on account of the untimely demise of its sole earning member." In the present case the respondents have provided immediate relief to tide over the sudden financial crisis befallen on the family members of the deceased employee by paying a sum of Rs. 3000/- p.m. to the mother of the petitioner since October, 1994 and at present she is getting Rs. 4000/- p.m., till she attained 60 years of her age.

10. The Hon'ble Supreme Court in the case of **State of J & K and others Vs. Sajad Ahmd Mir** { (2006) 5 S.C.C. 766 }, in para 11 has held as under :-

> "11.....it is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office.

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This general rule should not be departed from except whe compelling circumstances demand, such as, death of the sc breadwinner and likelihood of the family suffering because of th setback. Once it is proved that in spite of the death of th breadwinner, the family survived and substantial period is ove there is no necessity to say "goodbye" to the normal rule o appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution."

11. In view of the above settled principles of law, there is no merit in this petition. The petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur